

REMARKS

I. Status of the Claims

Claims 1-50 and 53 are pending in this application. Claims 4 and 27-49 have been withdrawn from consideration by the Examiner. Claims 51 and 52 have been deleted herein without prejudice or disclaimer. Claim 1 has been amended herein to include the limitation that the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer is greater than or equal to 3:1 and to delete the limitations that the inventive composition is a pretreatment composition and that the pretreatment composition is not a dyeing composition, a bleaching composition, a permanent waving composition, a relaxing composition, or a straightening composition. Support for this amendment can be found in original claim 1 and Examples 1 through 4 of the present application.

Claim 53 has been added. This claim is drawn to a pretreatment composition comprising at least one compound chosen from ceramides and glycoceramides, at least one cationic polymer, and at least one amphoteric polymer, wherein the pretreatment composition is not a dyeing composition, a bleaching composition, a permanent waving composition, a relaxing composition, or a straightening composition, wherein the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer is greater than or equal to 2:1, and wherein the pH of the pretreatment composition is greater than or equal to about 4. Support for this claim can also be found on page 1, line 15 through page 2, line 1, page 2, line 15 through page 3, line 2, and in Examples 1 through 4 of the present application.

Accordingly, no new matter has been added by these amendments.

II. Rejection Under 35 U.S.C. § 103

Claims 1-3, 5-26, and 50-52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,799,456 ("*Dubief*") in view of U.S. Patent No. 5,656,258 ("*Cauwet*") and U.S. Patent No. 5,958,392 ("*Grollier*") for the reasons set forth on pages 2-4 of the present Office Action. Applicants respectfully traverse this rejection.

The Examiner contends that it would have been obvious to have modified the compositions of *Dubief* by the addition of the amphoteric polymer of *Cauwet* or *Grollier*. See page 4 of the present Office Action. Applicants disagree.

One criteria an Examiner must demonstrate in order to establish a prima facie case of obviousness is that the reference teaches or suggests all the claim limitations. See M.P.E.P. § 2143. Independent claim 1, as amended, recites that the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer is greater than or equal to 3:1. Here, even if, *arguendo*, the proposed modification was made, the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer in the resulting compositions would still be less than or equal to 3:1. For example, *Cauwet* expressly requires that the weight ratio of its at least one quaternary polyammonium polymer (a) to its at least one polymer (b) containing diallyldialkylammonium units be less than 1. See *e.g.*, Abstract. Similarly, not one of the twenty-six compositions exemplified in *Grollier* has a weight ratio of at least one cationic polymer to at least one amphoteric polymer greater than or equal to 3:1. Accordingly, the cited references, when combined as proposed by the Examiner, fail to teach or suggest all of the limitations of claim 1.

Similarly, new independent claim 53 is drawn to a pretreatment composition comprising at least one compound chosen from ceramides and glycoceramides, at least one cationic polymer, and at least one amphoteric polymer, wherein said pretreatment composition is not a dyeing composition, a bleaching composition, a permanent waving composition, a relaxing composition, or a straightening composition, wherein the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer is greater than or equal to 2:1, and wherein the pH of the pretreatment composition is greater than or equal to about 4. Neither *Cauwet* nor *Grollier* teaches or suggests a pretreatment composition (1) which is not a dyeing composition, a bleaching composition, a permanent waving composition, a relaxing composition, or a straightening composition, (2) wherein the weight ratio of at least one cationic polymer to at least one amphoteric polymer is greater than or equal to 2:1, and (3) wherein the pH of the pretreatment composition is greater than or equal to about 4. See e.g., *Cauwet's* Abstract and Examples 1 through 26 of *Grollier*. Accordingly, the cited references, when combined as proposed by the Examiner, fail to teach or suggest all of the limitations of claim 53.

With respect to the multi-compartment kit of claim 50, the Examiner asserts that "making a kit comprising the composition herein and other hair treating composition, such as hair dyeing composition is obvious to one of ordinary skill in the art because such composition is known to be particularly useful before or after other hair treatment." See page 4 of the present Office Action. Applicants respectfully disagree. Nowhere do any of the cited references teach, suggest, or even mention a kit, let alone a kit comprising, in a second compartment, an oxidizing composition. Accordingly, even if

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the proposed combination of the references were made, Applicants respectfully submit that the requisite objective teaching or suggestion to further modify the combined teachings to form a kit is not present in the references.

For at least the foregoing reasons, Applicants respectfully request the withdrawal of these § 103(a) rejections.

V. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of the pending claims and reexamination of the application. The timely allowance of the pending claims is respectfully requested.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: 

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